

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

11/19/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000241

FILED: _____

STATE OF ARIZONA

KENNETH M FLINT

v.

KEN THOMAS MICELI

PHILLIP G NOLAND

REMAND DESK CR-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

SCOTTSDALE CITY COURT

Cit. No. #1465019

Charge: 1. DUI-ALCOHOL-DRIVING IMPAIRED
2. BAC OVER .10 WITHIN 2 HRS OF DRIVING
3. FAILURE TO DIM HEADLIGHTS (HIGHBEAM)

DOB: 12/13/54

DOC: 10/11/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since the time of oral argument on October 23, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Scottsdale City Court, the exhibits made of record and the Memoranda submitted by counsel.

The facts of this case indicate that Appellant, Ken Thomas Miceli, was stopped by the Scottsdale Police on October 11, 2000 and accused of: (1) Driving While Under the Influence or Being in Actual Physical Control, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); (2) Having a Blood Alcohol Level Greater than .10 W/In 2 Hrs of Driving, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(2); and (3) Failure to Dim Headlights, a civil traffic violation in violation of A.R.S. Section 28-942.1. Appellant made a Motion to Suppress/Dismiss based upon the issue of "reasonable suspicion" by the Scottsdale Police officers to make a stop of his vehicle. Appellant's Motion was denied. Thereafter, the parties submitted the case to the court on the basis of stipulated evidence and Appellant was found guilty of the charges. Appellant has filed a timely Notice of Appeal in this case.

The only issue presented on appeal is whether the trial court erred in denying Appellant's Motion to Dismiss, wherein Appellant claimed that the police lacked a "reasonable suspicion" to stop his vehicle. Appellant claims that the Scottsdale Police officers had no "reasonable suspicion" which would justify the stop of his vehicle. An investigative stop is lawful if the police officer is able to articulate specific facts which, when considered with rational inferences from the facts, reasonably warrant the police officer's suspicion that the accused, committed, or was about to commit, a crime.¹ These facts and inferences when considered as a whole the ("totality of the circumstances") must provide "a particularized and objective basis for suspecting the particular person stopped of criminal activity."² A.R.S. Section 13-3883(B) also provides, in pertinent part, authority for police officers to conduct an "investigative detention":

A peace officer may stop and detain a person
as is reasonable necessary to investigate an
actual or suspected violation of any traffic
law committed in the officer's presence and
may serve a copy of the traffic complaint
for any alleged civil or criminal traffic violation.

¹ *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968); *State v. Magner*, 191 Ariz. 392, 956 P.2d 519 (App. 1988); *Pharo v. Tucson City Court*, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

² *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed. 2d 621, (1981).

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A temporary detention of an accused during the stop of an automobile by the police constitutes a “seizure” of “persons” within the meaning of the Fourth Amendment even if the detention is only for a brief period of time.³ In *Whren*⁴, the United States Supreme Court upheld the District’s Court denial of the Defendant’s Motion to Suppress finding that the arresting officers had probable cause to believe that a traffic violation had occurred, thus the investigative detention of the Defendant was warranted. In that case, the police officers admitted that they used the traffic violations as a pretext to search the vehicle for evidence of drugs. The Court rejected the Defendant’s claim that the traffic violation arrest was a mere pretext for a narcotic search, and stated that the reasonableness of the traffic stop did not depend upon the actual motivations of the arresting police officers. Probable cause to believe that an accused has violated a traffic code renders the resulting traffic stop reasonable under the Fourth Amendment.⁵

The sufficiency of the legal basis to justify an investigative detention is a mixed question of law and fact.⁶ An appellate court must give deference to the trial court’s factual findings, including findings regarding the witnesses’ credibility and the reasonableness of inferences drawn by the officer.⁷ This Court must review those factual findings for an abuse of discretion.⁸ Only when a trial court’s factual finding, or inference drawn from the finding, is not justified or is clearly against reason and the evidence, will an abuse of discretion be established.⁹ This Court must review *de novo* the ultimate question whether the totality of the circumstances amounted to the requisite reasonable suspicion.¹⁰

In this case the trial judge explained his ruling denying Appellant’s Motion to Suppress/Dismiss. The trial judge explained:

... I don’t think it was unreasonable for
the officer to pull the Defendant over
under these circumstances, so I’m
going to deny the motion. ...I think that

³ *Whren v. United States*, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

⁴ *Id.*

⁵ *Id.*

⁶ *State v. Gonzalez-Gutierrez*, 1987 Ariz. 116, 118, 927 P.2d 776, 778 (1996); *State v. Magner*, *Supra*.

⁷ *Id.*

⁸ *State v. Rogers*, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).

⁹ *State v. Chapple*, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983); *State v. Magner*, 191 Ariz. at 397, 956 P.2d at 524.

¹⁰ *State v. Gonzalez-Gutierrez*, 187 Ariz. at 118, 927 P.2d at 778; *State v. Magner*, 191 Ariz. at 397, 956 P.2d at 524.

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when you're flashing them (headlights)
either you got them on continuously, then
my interpretation of the statute would (be)
if you got your highbeams on continuously
and you're approaching somebody five to
800 feet away, that's a violation (of
the law).¹¹

The trial judge's ruling is supported by the record. Scottsdale Police Officer Abernethy testified that as Appellant's vehicle approached him, he noticed Appellant flashing his highbeams. Appellant continued to flash his highbeams (headlights) until after he had passed the officer. Appellant argues that his attempts to signal another driver that they had their highbeam headlights on, should not constitute a violation of A.R.S. Section 28-942.1 (Failure to Dim Headlights), must fail. Regardless of Appellant's innocent intent, his actions clearly give rise to a reasonable suspicion on the part of the Scottsdale police officer that either Appellant was violating the traffic code (by failing to dim his headlights) or was trying to signal the police officer that he was in trouble, or both.

This Court determines *de novo* that the facts cited by the trial judge, and the facts contained within the trial court's record, do establish a reasonable basis for the Scottsdale Police officers to have stopped the automobile driven by the Appellant. The trial judge did not err in denying Appellant's Motion to Suppress/Dismiss.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the Scottsdale City Court.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale City Court for all future proceedings in this case.

¹¹ Appellant's appendix of R.T. of March 23, 2001, at page 11.
Docket Code 512